

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal Communications Commission)	CC Docket No. 95-116
Seeking Comment on Initial Regulatory)	
Flexibility Analysis in Telephone)	
Number Portability Proceeding		

REPLY COMMENTS OF

MONTANA INDEPENDENT TELECOMMUNICATIONS
SYSTEMS
MITS

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INTRODUCTION

Montana Independent Telecommunications Systems (MITS) hereby files its reply comments in response to the initial comments filed in the Federal Communications Commission's (Commission's or FCC's) April 22, 2005, Request for Comments on the Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding, FCC 05-87, CC Docket No. 95-115. MITS' understanding was that the Commission sought comment on the Initial Regulatory Flexibility Analysis (IRFA) and that it would utilize the comments to assist it in preparing a Final Regulatory Flexibility Analysis in conjunction with its *Intermodal Order*, 18 FCC Rcd 23697 (2003). The Commission further stated it would utilize the comments to determine whether to modify the intermodal porting rules with respect to its application to small entities in light of the requirements of the RFA.

BACKGROUND

As stated in our initial comments, MITS is a trade association, representing a group of rural, independent and cooperative carriers¹ that provide a variety of telecommunications and information services, using both wireline and wireless technologies. Our customers live and work in some of

¹ MITS' members include Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Triangle Telephone Cooperative Association, and Southern Montana Telephone Company, all headquartered in Montana.

the most remote areas of the Nation. Our smallest member company serves less than a thousand access lines. In most cases, MITS' members have provided basic telecommunications services since their creation roughly 50 years ago. In recent years, however, our customers have demanded more advanced services and in all cases, MITS' members have stepped up to the challenge, providing nearly ubiquitous access to high-speed Internet services using DSL technology. A number of MITS' members also provide wireless voice and data services, as well as an extensive network of fully interactive video conferencing studios that communicate with similar studios across the country and around the world.

When there has been consumer demand for new services, MITS' members have moved aggressively to respond to those demands within acceptable parameters of risk. Obviously, very small companies such as those represented by MITS cannot make significant network investments based on the demand for a particular service by only a very small number of subscribers due to the risk that costs would significantly outpace revenues. Unfortunately, this appears to be the case for intermodal number portability. MITS' members have experienced little or no demand for the service, yet the costs of installing and implementing the service are quite high. For this reason, we agree with the initial comments of the National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), which

state: “The Commission’s response to the D.C. Circuit ruling is an IRFA that ignores the network capabilities of small carriers and fails to address the significant compliance burdens these providers face.”²

REPLY COMMENTS

I. Demand for Portability and Cost Considerations

As noted in our initial comments, none of MITS’ member companies has experienced or anticipates any measurable demand from its customers to port their telephone numbers to any other telecommunications carriers in the foreseeable future. Further, at least to date, there has been little in the way of competitive telecommunications activity in the areas served by these companies. Because of low population densities and high costs of service, CLECs, cable television companies, and even wireless carriers generally choose to bypass most of the geographic areas served by MITS’ member companies. Although MITS applauds the Commission’s stated goals of promoting competition and encouraging carriers to provide new services, we fear that the Commission’s local number portability requirements may cause economic harm to the very consumers who are the supposed beneficiaries.

Some of the wireless commenters in this docket have argued that rural companies have little or no reason to be concerned about costs precisely because the demand for local number portability is so low. For example, Sprint Nextel, on page 3 of its initial comments, argues that if rural LEC

² Initial Comments of NTCA and OPASTCO, page 2.

porting volumes are “very low” and “rare” as SBA states, then the volume-sensitive costs cannot possibly impose a “significant economic impact” on rural LECs. Leaving aside for the moment the issue of whether Sprint Nextel is correct in saying volume-sensitive costs are low, it fails to address volume-insensitive costs associated with number portability.

The volume-insensitive cost categories have been well documented. They include, among others, software and switch upgrades, establishing arrangements for data dips, training personnel and, in some cases, hiring new personnel. These costs are incurred even if there is no demand for number portability. In the Montana state proceedings conducted under § 251(f)(2), carriers presented testimony that these costs in most cases were significant.

However, rural carriers cannot assume that only volume-insensitive costs will be incurred. They have no way of predicting demand. No analysis is complete unless it includes both volume-sensitive and volume-insensitive costs. Costs such as transport must be included in the analysis. A number of commenters have noted the highly significant impact of costs in general. For example, see comments filed by the Missouri Small Telephone Company Group, Nebraska Rural Independent Companies, Montana Small Rural Independents, and the South Dakota Telecommunications Association.

One wireless carrier, Verizon Wireless, went so far as to say that “any costs and burdens associated with offering LNP to requesting customers are reasonable and are far outweighed by the benefits that flow from competition and

consumer choice.”³ This statement is absurd. In cases where there is little or no demonstrated demand and high implementation costs, all of the customers of a small rural telephone company will almost certainly see a significant local rate increase for a service for which few if any will benefit. Moreover, allocating limited resources to provide a service for which there is no demand is a poor management practice. Even if demand for a service such as number portability is high, it is possible that the costs of providing the service could still outweigh the benefits.

MITS agrees with the following comments filed by NTCA and OPASTCO:

... the high per-subscriber costs of deploying intermodal LNP, coupled with low demand for wireline-to-wireless porting, imposes significant economic burdens on two percent carriers that the Commission must address. Were the Commission to conduct a rational cost-benefit analysis, it would find that the costs of imposing the existing intermodal LNP requirement on two percent carriers far outweigh the perceived benefits that consumers in those areas derive from the availability of the service.⁴

II. Unresolved Technical Issues

As noted in MITS’ initial comments, the MITS companies have spent considerable resources analyzing the *Intermodal Order* and attempting to understand its requirements. After sending staff to numerous training sessions, working with consultants, and communicating with equipment vendors and others, the MITS companies concluded that the *Intermodal*

³ Initial Comments of Verizon Wireless, page 1.

⁴ Initial Comments of NTCA and OPASTCO, page 3.

Order was overly vague. Significant unresolved technical and economic issues associated with the implementation of intermodal LNP remain.

Perhaps the most significant technical issues involve how to accomplish the routing of traffic where the porting requirements imposed by the FCC's order seem to obligate MITS' members to route traffic to locations outside the member's own network. We disagree with those commenters who believe that rural LECs' costs associated with routing calls to ported numbers to points outside their calling areas are not significant. For example, Verizon Wireless "does not believe these costs are significant or that they warrant denying LNP to small carriers' customers." Further, it stated that, "The incremental cost of transporting a call outside of a local service area could be limited to the cost to transit a call through the LATA tandem switch."⁵

Verizon Wireless's statements may be true in cases where the transport to the nearest tandem is relatively short; however, in Montana the distance to the nearest access tandem can be in excess of three hundred miles thus imposing considerable transport costs. We concur with NTCA and OPASTCO's identification of the issue in their initial comments:

It is technically infeasible for carriers with less than two percent of the subscriber lines nationwide ("two percent carriers") to comply with the rating and routing requirements of the Intermodal LNP order in the absence of established points of interconnection (POI) with wireless carriers. Two percent carriers are limited to transporting traffic within their exchange boundaries and to POIs at their boundaries. Calls that are originated by customers of two percent carriers and destined to POIs

⁵ Initial Comments, Verizon Wireless, page 6.

beyond the originating carrier's network are both rated and routed by the customer's toll provider or interexchange carrier (IXC), not the originating ILEC. In the absence of a technically factual and legally sound resolution to these specific network issues, there is not a basis for requiring the routing and billing of calls ported outside of the two percent carriers' local exchange in the same fashion as they were prior to the port. Any attempt to complete a Regulatory Flexibility Analysis in this docket must fully account for this fundamental issue.⁶

This issue concerns MITS' members more than any other, particularly because the Order stated that these very transport cost issues "were outside the scope of the number portability proceeding."⁷ With this short phrase, the MITS members were left at a complete loss with respect to one of the most important and potentially most expensive issues surrounding number portability. While we felt that the Act supported our argument that we could not be forced to transport the traffic of others to locations outside our service areas at our own cost,⁸ we doubted the FCC would support our interpretation of the Act.

III. State Proceedings Under Section 251(f)(2)

As noted in our initial comments, in light of the uncertainty regarding the meaning of the FCC Order and the apparent lack of demand for intermodal LNP in rural Montana, MITS, on behalf of its member companies,

⁶ Initial Comments of NTCA and OPASTCO, page 2.

⁷ 20 FCC Red 8622, paragraph 13.

⁸ As the South Dakota Telecommunications Association states on page 3 of its Response to the Initial Regulatory Flexibility Analysis, "there is no obligation under the Act for LECs to transport local traffic outside of the local calling area or service area."

decided to pursue relief under the provisions of 47 U.S.C. § 251(f)(2) of the 1996 Federal Telecommunications Act. In our initial comments, we applauded the existence of this alternative means of resolving our disputes with wireless carriers over the meaning of the FCC's *Intermodal Order*. However, we read with great interest the initial comments filed by others with regard to the § 251(f)(2) process.

We note with interest NTCA and OPASTCO's view that "[t]he suspension and modification provision of section 251(f)(2) is intended to address discrete, extraordinary situations where the application of a requirement would impose an unexpectedly adverse economic impact on that particular carrier and its customers. It is not intended to address rules that impose such adverse impacts on virtually all two percent carriers across the board."⁹ However, as proved to be the case for hundreds of rural ILECs across the country, the members of MITS simply felt that they were unlikely to get clearer direction from the FCC.

In retrospect, NTCA and OPASTCO are probably correct in their observation that "forcing hundreds of small companies to seek state commission relief from a federal regulatory requirement is inefficient and abdication of the Commission's responsibility under the Regulatory Flexibility Act. Small companies had virtually no alternative other than to hire consultants to perform costs studies, and to hire attorneys to file petitions to request relief from their state commission. These small

⁹ Initial Comments of NTCA and OPASTCO, page 15.

companies were forced to absorb the costs associated with filing for suspensions and modifications with no guarantee they would be granted. Moreover, state commissions were compelled to consider dozens, and in some cases, hundreds of individual petitions.”¹⁰ MITS itself initiated proceedings on behalf of a number of its members simultaneously and ultimately executed stipulations that were slightly different from member to member. All of this might have been avoided if the FCC’s rules had been a bit more comprehensive and uniform from the outset.¹¹

While we consider the comments of NTCA and OPASTCO to be of interest, MITS members clearly benefited from the existence of § 251(f)(2) process. Without that section, we would not have been able to resolve a number of issues that the FCC left unresolved. Further, we continue to believe that state commissions are in a better position than the FCC to understand and address the unique circumstances of carriers and subscribers in their states. Therefore in the interests of safeguarding small, rural carriers, we support the continued existence of the § 251(f)(2) process.

IV. IRFA Deficiencies

¹⁰ Initial Comments of NTCA and OPASTCO, page 16.

¹¹ After all, we were fortunate in Montana insofar as we were able to arrive at stipulations among the rural companies relatively early in the proceedings. The South Dakota Telecommunications Association notes at page 7 of its initial comments that the South Dakota’s hearing on this issue lasted two weeks! Had every state in the country spent as much time on this issue (which does not include, of course, the extraordinary amount of preparation that must have occurred to call for a two-week hearing) then the FCC’s failure to provide clarification on this point would indeed have created an enormous workload for the states.

We agree with the commenters who state that the FCC's IRFA released on April 22, 2005, was deficient insofar as it failed to address a number of important issues.¹² We applaud commenters such as the Office of Advocacy of the U.S. Small Business Administration that addressed these deficiencies.

The Office of Advocacy of the U.S. Small Business Administration makes a series of common-sense recommendations that highlight three alternatives for consideration by the FCC. MITS concurs with these proposals:¹³

- 1) Limiting number portability to instances where there is a point of physical interconnection;
- 2) Waiving the enforcement of intermodal number portability until the Commission has issued a decision in the other rulemaking that addresses the rates and routing issue;
- 3) Exempting small rural wireline carriers from the intermodal portability requirement.

CONCLUSION

The majority of commenters raised significant issues regarding the ability of small rural carriers to implement the FCC's local number portability order. For this reason, we urge the FCC to give serious consideration to recommendations such as those made by the Office of Advocacy of the U.S. Small Business Administration.

¹² USTA's initial comments, pages 4-13.

¹³ Office of Advocacy of the U.S. Small Business Administration, pages 7-8.

RESPECTFULLY SUBMITTED This 6th day of September, 2005.

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